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EXAMINER

PELLEGRINO, BRIAN E

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3738

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/427,260
Filing Date: October 25, 1999
Appellant(s): KHOSRAVI ET AL.

Jennifer Buss
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/9/09 appealing from the Office action mailed 11/14/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

Appellant's brief presents arguments relating to drawing problems. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

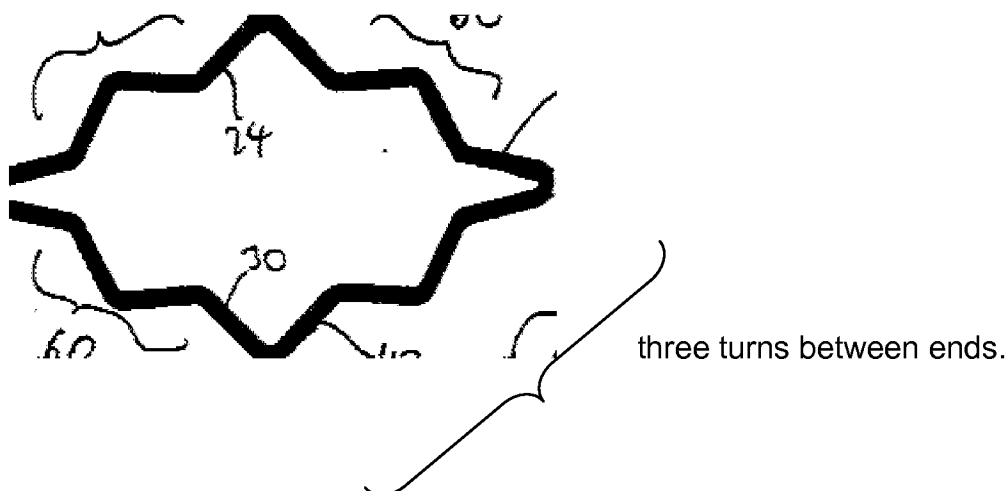
20010047200	White et al.	11-2001
5,824,054	Khosravi et al.	10-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 29,30,55,56,59,60,62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over White et al. (2001/47200) in view of Khosravi et al. (5824054).

Figs. 15A,B of White show a complete or entire stent configuration formed of a plurality of stretchable elements defining a plurality of cells **22**. It can be seen that there are first and second wing-like elements extending generally parallel to the longitudinal axis and are connected to an adjacent longitudinal wing-like element at looped ends. It can also be seen there are a plurality of peripheral connectors intermediate two longitudinal members as seen in Fig. 15A. White discloses the stent is made of shape memory material such that it is plastically deformable (paragraphs 59,63), and thus is unstretched at 25°C and expands at body temperature. White also shows (Fig. 10) the stents can have cells such that they have longitudinal elements that are curvilinear and have



The Examiner interprets point to point as ends of a longitudinal member. Thus, based on White's disclosure that cells are connected adjacent to one another as seen in Figs. 6A,7-9,15A,15B, it clearly can be deduced that a stent can have a configuration with the cells being illustrated in Fig. 10. With respect to claim 59, White illustrates (Fig. 8) that the stent pattern can include cells with different areas. Figs. 16,17 show different patterns can be combined. Regarding claim 64, it can be seen that from Figs. 15A and 15B that the number of turns in a longitudinal element remain the same from unexpanded to the expanded state. Thus, it can be deduced that a stent with the cells of Fig. 10 would have three turns when contracted, unstretched or compressed.

However, White et al. do not disclose the stent is formed of a coiled sheet or include locking elements.

Khosravi et al. show (Fig. 6) a sheet stent **50** having a plurality of locking elements **51** capable of being engaged in openings in the stent when coiling the stent. Khosravi additionally teaches the stent pattern used should accommodate its intended use, col. 3, lines 35-41. It would have been obvious to one of ordinary skill in the art to use a coiled sheet to form the stent and include locking elements as taught by Khosravi et al. in the stent of White et al. such that it prevents collapse.

(10) Response to Argument

Applicant argues that the cells in the stent of White of Fig. 15A,B do not have the longitudinal member with three curves. However, to be clear the Examiner is not relying on these figures for the structure of the cell, but only to illustrate a stent configuration

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where the cells are connected adjacent to one another and also that the stent is capable of being in a compressed state and then an expanded state. Most stents are designed as such to function that way, but the Examiner used these figures to illustrate such a feature. Second the Examiner refers Applicant to other figures such as 6A and 7-9 that all illustrate cell patterns connected adjacent to one another where the cell pattern shows the cell area being larger in the second row than a row adjacent thereto. Therefore, it can be deduced that clearly one of ordinary skill would have the stent with the cells being the same as shown in Fig. 10 upon using this cell for the stent configuration or pattern. As mentioned above, this cell contains the longitudinal members with three turns.

Applicant argues that the stent of White does not have the claimed configuration of area being different in the adjacent rows. However, upon using cells of Fig. 10, clearly the stent has different areas for the first and second cells adjacent one another as seen for configurations of the Figs. 6A and 7-9 and thus the same is true for that using Fig. 10 cells.

Applicant contends that the disclosure of White is "incomplete" and does not state whether the Fig. 10 stent cell is expanded or unexpanded. The Examiner notes that even if it is expanded as believed by Applicant, it is the same configuration of Applicant's Fig. 10B expanded cell having three turns for the 4 longitudinal members forming the cell and would form a similar orientation as Fig. 10A of Applicant's unexpanded condition having the difference in area for adjacent row cells. This can be supported by White's showing in Fig. 6B, for example, wherein the unexpanded

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condition shows the area being larger for the second row between the rows of unexpanded cells. Therefore, a stent with the cells of Fig. 10 illustrated by White would inherently have the area between the rows of unexpanded cells being larger than the area of an unexpanded cell.

Applicant argues that the Examiner's reliance on Figs. 6A,7-9,15B is misplaced. However, the Examiner disagrees as it is his position that one of ordinary skill clearly would grasp the concept White was conveying in the drawings and one of ordinary skill would be led and understand that a stent with the cells of Fig. 10 can be constructed following the concept of the other drawing figures. Applicant argues these figures of White are not compressed state cells. However, as mentioned above, the reliance on these figures is only for orientation of cells. Second, the most clear illustration of a cell in a compressed state of a complete configuration can be best seen in Fig. 6B and clearly it would follow that such a stent with cells of Fig. 10 provides the same result of cells in adjacent rows with different areas. However, to be clear it is the area that results from two connected rows of cells that lies between that is an area of larger dimension and can be defined as a "cell" as used by the Applicant to claim the invention. Additionally, the Examiner would like to reiterate that the cells of Fig. 10 have three turns and that the Examiner is not relying on other Figs. for the cell structure, but only for what a stent arranged with "cells" would look like. White clearly provides enough illustration to convey the concept intended and thus, a cell of Fig. 10 can be used to form a stent as claimed.

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Lastly, the rejection is a combination of references, and the Applicant failed to dispute that Khosravi's teaching of a stent with locking elements can be used to modify the stent of White. Therefore, in view of the Examiner's comments above regarding White, the rejection of White in view of Khosravi teach the claimed invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Brian E Pellegrino/

Primary Examiner, Art Unit 3738

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/DAVID P. BRYANT/

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